

From: "Bill Dunn" <wdunn@americanpayroll.org> on 03/13/2006 05:10:00 PM

Subject: Electronic Fund Transfer Act

American Payroll Association

Government Relations • Washington, DC

Ms. Jennifer J. Johnson, Secretary

Board of Governors of the Federal Reserve System

20th Street and Constitution Avenue, NW

Washington, DC 20551-0001

By e-mail: regs.comments@federalreserve.gov

Re: Interim Final Rule Addressing Payroll Cards; Docket No. R-1247

Dear Ms. Johnson:

Thank you for the opportunity to present comments on the interim final rule of Regulation E, addressing payroll debit cards. These comments represent the views and concerns of the American Payroll Association.

The American Payroll Association is a nonprofit professional association representing over 22,000 companies and individuals in all 50 states and Canada. The APA's central mission is to educate its members and the entire payroll industry about the best practices associated with paying America's workers their wages while successfully complying with all federal, state, and local wage payment, employment tax withholding, and information reporting laws. The APA's secondary mission is to work with legislative and executive branches of all levels of government to find ways for employers to meet their requirements under law and support government objectives, while minimizing administrative burden for government, employers, and individual workers/taxpayers.

In reaction to the growing employer interest in the use of payroll debit cards in the United States, the APA's Government Affairs Task Force formed a Payroll

Card Subcommittee to monitor the development and use of these cards within the employer community and to help educate policymakers and regulators about the benefits and uses of these cards before they issue regulations governing their use. This subcommittee is made up of 40 active and knowledgeable APA members representing large and mid-size employers, payroll service providers, and other third-party vendors specializing in the deployment of payroll debit card programs.

The APA and its Payroll Card Subcommittee are generally very pleased with the Board's conclusions and interim final rules that were published on January 10. We believe that the Board has established several important elements that will benefit workers and employers who use payroll cards. We do have two remaining areas of concern, however, in (1) Supplement I to Part 205—Official Staff Interpretations, and (2) Section 205.18(a), having to do with the issuance of an access device.

Supplement I to Part 205—Official Staff Interpretations

Section 205.18(a) provides that a financial institution may issue an access device “only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive his or her salary through a payroll card account.”

We certainly understand the application of such a rule in the context of financial institutions and consumers. Consumers would be understandably upset to receive unasked-for debit or credit cards from a financial institution. However, employers have significant ongoing relationships with their workers, and in the context of offering alternatives for a worker's receipt of their wages, both employers and workers would benefit from a rule permitting employers to issue an access device with the applicable initial disclosures and program information.

Workers who receive such program information with the access card would be able to immediately consider the alternatives and activate the card if they so choose. It is important that workers be afforded this flexibility and rapid implementation to enable them to select and immediately use their preferred method of payment. Otherwise, new workers will experience unnecessary transitional problems with their first paycheck; for example, where to cash the check and how to convert the cash into bill payments that can be mailed. One concern is that once a worker addresses these types of issues, inertia and discomfort with financial matters will make their initial choices, however costly and difficult, effectively permanent. The Board should recognize the substantial relationships that exist between workers and their employers, and permit employers to issue access devices simultaneously with the applicable initial disclosures.

This approach would not conflict with the compulsory use prohibition, given the Board's guidance that “provided that an employer does not require a consumer to obtain a payroll card account as the method of receiving pay, and permits, for example, a

consumer to receive pay via direct deposit to a financial institution, the compulsory use prohibition should not be implicated.” This section makes it clear that an employer who issues an access device for consideration and possible activation would do so in the context of offering other alternatives for receipt of wages.

§205.18(b) Alternative to Periodic Statement

Another area of concern is with §205.18(b) Alternative to Periodic Statement, which provides that financial institutions need not furnish periodic statements under §205.9(b) if the following are made available:

- (i) The consumer’s account balance, through a readily available telephone line;*
- (ii) An electronic history, such as through an Internet Web site, of the consumer’s account transactions that covers at least 60 days preceding the date the consumer electronically accesses the account; and*
- (iii) A written history of the consumer’s account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of receipt of a request by the consumer.*

One APA member’s direct experience with maintaining a toll-free Interactive Voice-Response (IVR) system for payroll debit card holders is that, on average, the cardholders make about four calls to the system per month to obtain their latest card balance, which costs the company roughly \$.30 per month per card. While \$3.60 per cardholder annually is not an exorbitant amount, it is a significant concern in part because it is unbounded, and because there is no incentive for cardholders to minimize the associated administrative expense. We believe that it would be appropriate to establish a reasonable limitation as to the number of calls cardholders can make without charge, after which a nominal fee should be permitted. Any such limitations and associated fees would have to be disclosed in program materials.

Conversely, since employers incur no direct per-inquiry costs associated with electronic inquiries (via the Internet), it does not seem appropriate or necessary to permit any fees for inquiries or transactions initiated electronically. To the extent that the interim final rule would need to be altered to permit fees after a certain number of calls (e.g., two per pay period), we ask that the Board consider appending such language to the final rule.

Again, the APA’s Payroll Card Subcommittee appreciates this opportunity to comment on this important payroll matter. With the appropriate regulatory framework established by the Board, we believe that payroll debit cards will become an increasingly important and beneficial means by which the workforce will receive their pay. Electronic payments via payroll card represent a significant improvement for most consumers over more costly, less secure and fraud-prone paper paychecks. Payroll debit cards promote our electronic payment systems while providing those workers who would unlikely be able to participate in these systems the opportunity to engage in convenient and safe electronic commerce.

Please call me at 202-857-1476 or e-mail me at wdunn@americanpayroll.org if you have any questions or if we can be of service.

Sincerely,

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